

Serial No. 09/491,721  
Response to Office Action mailed on October 2, 2008

## REMARKS

The claims are 33-49. Claims 1-32 are cancelled. Claims 33-49 are newly presented for consideration by the Office. Claims 33-49 present the subject matter of the previous claims in a preferred format and do not add new matter. Consideration and allowance of claims 33-49 is respectfully solicited.

### Claim Rejections

Claims 1-6, 9-11, 13-17, and 25-30 were rejected under 35 USC §102(b) as anticipated by US 5,336,545 issued to Morman ("Morman"). Claims 1-6, 9-11, 13-17, and 25-30 were alternatively rejected under 35 USC §103(a) as being unpatentable over Morman. Claims 1-17, and 25-30 were also rejected under 35 USC §103(a) as being unpatentable over Morman in view of Hassenboehler (US RE35,206). Claims 7, 8 and 12 were alternately rejected as unpatentable over Morman in view of Haffner (US 5,789,065). These rejections are moot in light of the present amendments. However, to advance prosecution, Applicant's take the opportunity to address the rejection in light of the present claims.

### Rejection under 35 USC §102(b)

A rejection under 35 USC §102(b) cannot be sustained unless each and every feature of the claims is found in the reference. Applicant's claims recite a laminate having two nonwoven webs that have been consolidated laterally by heating the webs, drawing the webs in a machine direction, and cooling but not heat setting the webs. Basis for this limitation is found on page 14, line 24 to page 15, line 10.

Morman teaches that necking and heat treating a nonwoven decreases tensile properties but increases cross-direction stretch. The nonwovens specified in the

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claims are identified as heated and drawn to consolidate and then cooled but not heat set. Mormon does not teach laminates made with drawn but not heat set nonwoven webs.

**Rejections under 35 USC §103(a):      Morman**

As noted above, Mormon does not teach laminates made from drawn, but not heat set nonwoven webs. Nor can it be argued that Mormon suggests such laminates. In particular, the necked and heat treated nonwovens of Mormon are elastic. At Column 9, lines 28-34, Mormon specifically teaches that the nonwovens, after being necked and treated, are able to stretch and recover to the necked dimension when tension is applied and released. Mormon teaches that this property is essential. And necessary to enable the "composite elastic necked-bonded material to be stretchable in generally the same directions as the neckable material".

By contrast, the nonwoven webs used in the present laminates are not elastic. As stated on page 11, lines 21-23 of the specification, the consolidation of the nonwovens should be sufficient to provide a "*nonelastic elongation range of from about 20% to about 200%*" (emphasis added).

Morman does not suggest laminates made from nonwovens that are consolidated but not heat set and not elastic. Nor is there any motivation from Mormon to direct the skilled artisan to such laminates and, in fact, Mormon teaches away from such laminates by indicating criticality to having the consolidated nonwoven be elastic.

Because the laminates of Mormon use nonwoven webs that are made by a different process and have different properties from those used in the presently claimed laminates, the Office has no basis for any presumption that the elongation or force to break values recited in the claims are inherent in the Mormon laminates.

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**Rejections under 35 USC §103(a):     Morman/ Hassenboehler**

The deficiencies of Morman regarding the present claims is noted above.

Combining and/or substituting the teachings from Hassenboehler with those of Morman does not cure those deficiencies. In particular, Hassenboehler teaches a process of consolidating nonwoven webs by uni-directionally drawing the webs under an elevated temperature, and then heat setting the web. The webs used in the presently claimed nonwovens are not heat set.

Moreover, the Hassenboehler webs, as noted by the Office at page 3 of the Office Action, exhibit elasticity in the cross-direction. As noted above, the webs used in the present laminates are not elastic in that they have no recovery properties when tension is applied and released. Accordingly, the combination of Hassenboehler and Morman does not meet all of the limitations and features recited in the present claims and no prima facie case of obviousness has been established with respect thereto.

The combination of Morman and Haffner is also insufficient to establish a prima facie rejection on obviousness. Haffner teaches elastic laminates that are made by extruding an elastic film between a nip formed with two nonwoven fabrics. Longitudinal slits are made in the nonwoven layers of the laminate. In a separate step, the laminate is drawn under tension and heat to neck the slits. Haffner is noted for the disclosure of using metallocene-catalyzed films as the elastic layer and that the elastic layer may be perforated. Such teachings, however, do not address the fundamental deficiencies of Morman noted above and no other teachings are available in Haffner to disclose or suggest the use of the specific consolidated nonwoven webs recited in the present claims.

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## CONCLUSION

The newly presented claims are novel and not obvious over the references cited and applied by the Office. Consideration of the claims of the subject application and issuance of a Notice of Allowance is respectfully requested.

If the Office is not inclined to allow the claims, then Applicant respectfully request an interview to discuss any remaining issues with the application at the convenience of the Examiner.

Respectfully Solicited,



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